

CHAPTER NO. 447

SENATE BILL NO. 1668

By Person, Clabough

Substituted for: House Bill No. 1391

By Scroggs, Boyer

AN ACT To amend Titles 8, 24, 36, 37, 45, 68 and 71 of the Tennessee Code Annotated, relative to child support.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-2-305(b)(1), is amended by deleting subdivision (D) in its entirety and by substituting instead the following:

(D) The Department of Human Services or its contractor.

SECTION 2. Tennessee Code Annotated, Section 36-2-319, is amended, effective July 1, 2002, by deleting subsections (b) and (c) in their entireties and by substituting instead the following:

(b) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

SECTION 3. Tennessee Code Annotated, Section 36-5-101(f), is amended, effective July 1, 2002, by deleting subdivision (3) in its entirety and by substituting instead the following:

(3) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

SECTION 4. Tennessee Code Annotated, Section 36-5-103(f), is amended by deleting subdivision (1) and subdivision (6) in their entireties and by substituting instead the following and by re-numbering remaining subdivisions accordingly:

(1) (A) Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker, of the child, or, if there is an assignment of support pursuant to Title 71, Chapter 3, Part 1, upon request of the department or upon request of the custodial or noncustodial parent, or any other caretaker, of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, the department shall review, and, if appropriate, adjust the order in accordance with child support guidelines established pursuant to § 36-5-101(e). If at the time of the review, there is a "significant variance", as defined by department's child support guidelines, between the current support order and the support order if adjusted based upon the obligor's income, the department shall adjust the order. The department's efforts to seek adjustment, and the court's adjustment of the order, shall be in

accordance with the guidelines and shall be made without a requirement for proof or showing of any other change in circumstances.

(B) In the case of a request for review that is made within the three (3) year cycle, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, adjust the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection, a “substantial change in circumstances” shall be a “significant variance”, as defined by the department’s child support guidelines, between the amount of the current order and the amount that would be ordered under the department’s child support guidelines based upon the current income of the obligor.

(C) The review and adjustment in subdivisions (1)(A) and (B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

SECTION 5. Tennessee Code Annotated, Section 36-5-106, is amended by deleting the language “delinquent support” in the first sentence of subsection (a) and by substituting instead the word “arrear”; and is further amended by deleting the United States Code designation “654A(4)” in subsection (b) and by substituting instead the designation “654(4)”; and is further amended in subsection (c) by adding the language “and the amount of the arrear” immediately following the language “delinquent support”; and is further amended by deleting the language “Part 8 of this chapter” in subsection (c), and by substituting instead the Code designations and punctuation “§36-5-805, § 36-2-311”.

SECTION 6. Tennessee Code Annotated, Section 36-5-501(a)(3), is amended, effective July 1, 2002, by deleting subdivision (3) in its entirety and by substituting instead the following:

(3)(A) Unless a court or administrative order stipulates that alternative health care coverage to employer-based coverage is to be provided for a child subject to a Title IV-D child support order, in any case in which a noncustodial parent is required by a court or administrative order to provide health care coverage for such a child, and the employer of the noncustodial parent is known to the department, the department shall use any federally-required medical support notices to provide notice to the employer of the requirement for employer-based health care coverage for such child through the child’s parent who has been ordered to provide health care coverage for such child. The department shall send the federal medical support notice to any employer of a noncustodial parent subject to such an order within two (2) business days of the entry of such employee, who is an obligor in a Title IV-D case, into the directory of new hires under Title 36, Chapter 5, Part 11.

(B) Within twenty (20) business days after the date of the medical support notice, the employer of a noncustodial parent subject to an order for health care coverage for the child shall transfer the notice to the appropriate plan providing such health care coverage for which the child is eligible. The employer shall withhold from the noncustodial parent’s compensation any employee contributions necessary for coverage of the child and shall send any amount

withheld directly to the health care plan to provide such health care coverage for the child. If the employee contests the withholding of such employee contributions, the employer shall initiate withholding until the contest is resolved. The employee/obligor shall have right to contest the withholding order issued pursuant to this subdivision (3) based upon a mistake of fact according to the provisions for appeal provided pursuant to Title 36, Chapter 5, Part 10.

(C)(i) An employer shall notify the department promptly whenever the noncustodial parent's employment is terminated.

(ii) The department shall promptly notify the employer when there is no longer a current order for medical support in effect for which the department is responsible.

(D) The liability of the noncustodial parent for employee contributions to the health care plan necessary to enroll the child in the plan shall be subject to all available enforcement mechanisms under this title or any other provision of law.

(E) Upon receipt of the notice required by this subdivision which appears regular on its face and which has been appropriately completed, the notice is deemed a qualified medical child support order under 29 USC § 1169(a)(5)(C)(i). The health insurance plan administrator of a participant under a group health plan who is the noncustodial parent of the child for whom the notice was received pursuant to this subdivision, shall, within forty (40) business days:

(i) Notify the state Title IV-D agency of any state or territory that issued the notice with respect to whether coverage is available for such child under the terms of the plan, and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent, or official of a state or political subdivision thereof substituted for the name of the child pursuant to 29 USC § 1169(a)(3)(A), to effectuate coverage. The department or its contractors, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one (1) option available under the employer's plan; provided, however, if such response is not made to the plan administrator within twenty (20) business days, and the plan has a default option for coverage, the plan administrator shall enroll the child in that default option. If there is no default option, the plan administrator may call the office of the department or contractor which sent the notice and seek direction as to the child's enrollment in the available plans;

(ii) Provide the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage and permit the custodial parent or substituted official to file claims;

(iii) Send the explanation of benefit statements to the custodial parent, substituted official and the employee;

(iv) Send the reimbursement to the custodial parent, legal guardian or substituted official for expenses paid by the custodial parent, legal guardian or substituted official for which the child may be eligible under the plan.

(v) Nothing in subdivision (E) shall be construed as requiring a group health plan, upon receipt of a medical support notice, to provide benefits under the plan, or eligibility for benefits, under the terms of the plan in addition to, or different from, those provided immediately before receipt of such notice, except as may otherwise be required by the provisions of Title 56, Chapter 7, Part 23.

SECTION 7. Tennessee Code Annotated, Section 36-5-1002(a), is amended, effective July 1, 2002, by deleting subdivision (6) in its entirety and by substituting instead the following:

(6) Review of enrollment of a child for health insurance coverage in employer-based health coverage pursuant to § 36-5-501(a)(3) following issuance of an order to require the noncustodial parent to provide such coverage shall be limited to a mistake of fact.

SECTION 8. Tennessee Code Annotated, Section 36-5-1002(a)(13), is amended by deleting the Code reference “36-5-813” and by substituting instead the Code reference “36-5-816” and by deleting the word “or” at the end of subdivision (a)(13) and by substituting instead the word “and”.

SECTION 9. Tennessee Code Annotated, Section 36-5-1102, is amended by adding the language “hire date” immediately following the language and punctuation “a report that contains the name, address,”.

SECTION 10. Tennessee Code Annotated, Section 36-5-1201, is amended by deleting subsection (e) in its entirety and by substituting instead the following language:

(e) In this part, the term “high-volume automated administrative enforcement” in interstate cases means, on request of another state, the identification by the department, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the department, through levy or other appropriate means.

SECTION 11. Tennessee Code Annotated, Section 37-1-151(b)(4)(G), is amended, effective July 1, 2002, by deleting subdivision (G) in its entirety and by substituting instead the following:

(G) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent’s employer-based health care plan.

SECTION 12. Tennessee Code Annotated, Section 45-19-101(a), is amended by adding the language “and the Federal Parent Locator Service in the case of financial institutions doing business in two (2) or more states,” immediately preceding the language “a data match system”.

SECTION 13. Tennessee Code Annotated, Section 45-19-102(a)(1), is amended by adding the language “or for disclosing any records to the Federal Parent Locator Service as may be required by this part” immediately following the language and punctuation “contractors or agents,”.

SECTION 14. Tennessee Code Annotated, Section 36-5-101(a)(4), is amended by deleting subdivision (A) in its entirety and by substituting instead the following:

(A) The order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the court or directly to the spouse, or other person awarded the custody of the child or children; provided, however,

(i) that the court shall order that all child or spousal support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except, as set forth in subdivision (A)(ii), for child or spousal support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116;

(ii) that in all Title IV-D child or spousal support cases in which payment of child or spousal support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994 that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of Title 36, Chapter 6, Part 4, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the Department of Human Services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

SECTION 15. Tennessee Code Annotated, Section 36-5-501(b)(5), is amended by adding the following language as a new subdivision (b)(5)(A), and by designating the existing language as subdivision (b)(5)(B):

(A) In all Title IV-D child or spousal support cases in which payment of such support is to be made by income assignment, and in all cases where payments made by

income assignment based upon support orders entered on or after January 1, 1994 that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, the court, the clerk of court, or the department or its contractors shall only order that the support payments be made by income assignment to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of Title 36, Chapter 6, Part 4, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment by income assignment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, whether or not approved by the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall be void and of no effect. No credit shall be given by the court, the court clerk or the Department of Human Services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

SECTION 16. Tennessee Code Annotated, Section 36-5-901(b)(3)(C), is amended by adding the punctuation and language “, or in conjunction with or as an alternative” immediately following the language “In addition” in the first sentence.

SECTION 17. Tennessee Code Annotated, Section 36-5-901, is amended by adding the following sentence at the end of subdivision (a)(1):

The personal or real property, tangible or intangible, of the obligor that is subjected to the lien required by this part shall include all existing property at the time of the lien’s perfection, or acquired thereafter, even if a prior order for overdue support or arrears only specifies a certain amount of overdue support or arrears that was owed by the obligor at the time of such order.

; and is further amended by deleting subdivision (a)(2) in its entirety and by substituting instead the following:

(2) “Overdue support” is defined, for purposes of this part, as any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(a)(5) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-101(g). “Overdue support” shall include all amounts of support that are in arrears as defined in § 36-5-101(a)(5) and that remain unpaid by the obligor at the time the lien is perfected or which become due as arrears subsequent to the perfection of the lien.

SECTION 18. Tennessee Code Annotated, Section 36-6-406, is amended by adding the following as a new subsection (f):

(f) (1) In all Title IV-D child or spousal support cases in which payment of support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or

after January 1, 1994 that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only approve a temporary or permanent parenting plan involving the payment of support that complies with the requirements for central collection and disbursement as required by § 36-5-116. Prior to approval of a parenting plan in which payments are to be made directly to the spouse or the court clerk or to some other person or entity, there shall be filed with the plan presented to the court a written certification, under oath if filed by a party, or signed by the party's counsel, stating whether the case for which the plan is to be approved is a Title IV-D support case subject to enforcement by the Department of Human Services or is otherwise subject to collection through the department's central collection and disbursement unit established by § 36-5-116.

(2) Any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit for support payments shall be given by the court, the court clerk or the Department of Human Services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(g) Forms used by parties as parenting plans or adopted by the court for their use, shall conform to all substantive language requirements established by the administrative office of the courts at such time as parenting plan forms are promulgated and approved by that office.

SECTION 19. Tennessee Code Annotated, Section 37-1-151(b)(5), is amended by deleting the language "Parts 1-6".

SECTION 20. Tennessee Code Annotated, Section 36-5-101(e)(1), is amended designating the current language as item "(A)" by adding the following new language, to be designated as item "(B)":

(B) Notwithstanding any provision of this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars (\$10,000) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount, *[calculated by multiplying the appropriate percentage set forth in the child support guidelines by a net income of ten thousand dollars (\$10,000) per month]*, is reasonably necessary to provide for the needs of the minor child or children of the parties. In making its determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties.


SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application and to that end the provisions of this act are declared to be severable.

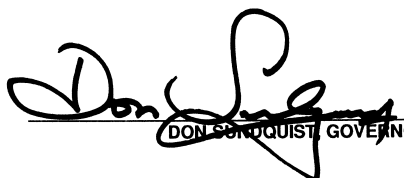
SECTION 22. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: July 12, 2001


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 18th day of July 2001


DON SUNDQUIST, GOVERNOR